IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICTION NO. 114 OF 2005

Shri Damodar Shanappa
Karbari through his next
brother Gurunath Karbari,
Panaji, Goa. ... Applicant

versus

State of Goa. ... Respondent

Mr. Arun Bras De Sa, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM : N. A. BRITTO, J.

DATE :18TH AUGUST, 2005.

P.C.:-

Heard Mr. Arun Bras De Sa, learned Counsel appearing on behalf of the Applicant/Accused and Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf of the State/Respondent.

The Applicant/Accused is facing trial in Sessions Case No. 4 of 2005 under Section 302 I.P.C. It is stated that

3 witnesses have already been examined and there are about 20 more witnesses to be examined. An application for bail filed by the Accused was rejected by the learned Sessions Judge, Panaji, by Order dated 7-5-2005 and, therefore, the Accused is now before this Court seeking bail during the pendency of his trial in the said case.

As can be seen from the reply filed, it appears that on 6-10-2004 at 10.00 hours P.S.I. of Mapusa Police Station had lodged a complaint on behalf of the State that on 6-10-2004 prior to 09.25 hours at Ghotanichovahi, Karaswada, Mapusa, the unknown accused person assaulted the unknown male aged about 50 years probably with laterite stone causing crushing injuries to his face resulting in his death. The deceased later on was identified to be one Shankarappa Poojari, resident of Acoi, Karaswada and native of Hubli, Dharwad and accordingly an offence was registered under Section 302 I.P.C. Subsequently, it appears that the Accused was identified by the Investigating Officer through a statement recorded of one Shankar Pawar. The said Shankar Pawar is alleged to have seen the Accused coming out from one bar at Karaswada and then arguing with the deceased over money issues and then with a stone in his hand

running towards the scrapyard of Muhammed and then having seen the deceased who was fighting in a pool of blood. Admittedly, the said Shankar Pawar is dead and his evidence will not be now available to the prosecution to prove its case.

In the above background, Mr. Bras De Sa, learned Counsel submits that there is no prima facie case made out against the Accused and, therefore, the Accused would be entitled to be released on bail.

On the other hand, Mr. Sardessai, learned Public Prosecutor submits that although, the said Shankar Pawar is dead the case of the prosecution is also based on circumstantial evidence. When asked as to what are the said circumstances, Mr. Sardessai has submitted that after the incident the Accused was found absconding and there were a few scratch marks found on his thigh when the Accused was medically examined.

Admittedly, the Accused is stated to be a labourer and in case he was found with scratch marks on his thigh and for that matter was unavailable to come to the Police Station after the incident, it would not lead to an inference to come to the

conclusion that the Accused was the assailant of the deceased. In matters of bail, it is not only the gravity of the offence which has got to be looked at but also the nature of the evidence by which the charge would be proved. Considering the nature of the evidence now available with the prosecution, to which reference has already been made, in my view, the Accused would certainly be entitled to be admitted to bail.

An apprehension was expressed on behalf of the learned Public Prosecutor that the Accused is not a permanent resident of this State, the Accused having been a native of Karnataka. It appears that on behalf of the Investigating Officer an effort was made to trace the permanent address of the Accused in Karnataka but he has been unable to trace his permanent address at Karnataka. Be that as it may, there is no dispute that for about the last 10 years or so, as stated by the learned Counsel appearing on behalf of the Accused and not disputed by the learned Public Prosecutor, the Accused has been residing at his given address in the Cause Title of the Bail Application. Considering the overall facts and circumstances of this case, the Accused could not be denied bail only because the Accused is a labourer and does not have a permanent residence

in this State. It is quite probable that the address given by the Accused is now his permanent address.

For reasons stated hereinabove, I allow the application for bail and hereby order that the Accused be released on bail upon execution of a bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the IInd Additional Sessions Judge, Panaji, with a further condition that during the trial of the case the Accused shall not change his given address without the permission of the learned Additional Sessions Judge, Panaji.

Application is disposed of on the above terms.

Authenticated copy to be expedited.

N. A. BRITTO, J.

RD.